

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:13-CV-527-F

U.S. TOBACCO INC.,)
U.S FLUE-CURED TOBACCO)
GROWERS, INC., and)
BIG SOUTH DISTRIBUTION, LLC,)

Plaintiffs,)

v.)

ORDER

BIG SOUTH WHOLESALE)
OF VIRGINIA, LLC, d/b/a BIG SKY)
INTERNATIONAL, BIG SOUTH)
WHOLESALE, LLC, UNIVERSAL)
SERVICES FIRST CONSULTING,)
a/k/a UNIVERSAL SERVICES)
CONSULTING GROUP, JASON)
CARPENTER, CHRISTOPHER SMALL,)
EMORY STEPHEN DANIEL,)
and other unnamed co-conspirators,)

Defendants,)

UNITED STATES OF AMERICA,)
Intervenor.)

This matter is before the court on Plaintiffs' Motion to Compel Testimony [DE-541]. Plaintiffs seek a court order compelling the government to produce a particular individual to serve as the government's Rule 30(b)(6) witness at the evidentiary hearing scheduled for August 24, 2016. The government and Defendants have responded in opposition, and Plaintiffs have replied. [DE-556, -561, -569].

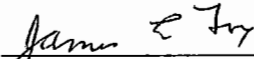
At the outset, the court observes that Rule 30(b)(6) governs depositions of an organization via a representative, and "[n]either the rules nor the advisory committee comments make any reference to the use of live Rule 30(b)(6) testimony at trial." *See* Stephen J. O'Neil,

Rule 30(b)(6) Witnesses at Trial, Fed. Law., Sept. 2013, at 71, 71. Nonetheless, courts that have considered the issue have held such live testimony “is permitted, and even encouraged.” *Id.* (citing *Brazos River Auth. v. GE Ionics, Inc.*, 469 F.3d 416, 434 (5th Cir. 2006)).

Plaintiffs here may not dictate whom the government designates as its representative. The plain language of the rule makes clear that an organization chooses its own Rule 30(b)(6) representative. Fed. R. Civ. P. 30(b)(6) (“[T]he named organization must . . . designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf.” (emphasis added)). Plaintiffs cite no authority for such a request, and the court has found none. Accordingly, the instant motion is DENIED.

SO ORDERED.

This the 22nd day of August, 2016.



JAMES C. FOX
Senior United States District Judge